

§ 240.11d1-1

17 CFR Ch. II (4-1-02 Edition)

(ii) Requirements, as a condition of a specialist's registration, that a specialist engage in a course of dealings for his own account to assist in the maintenance, so far as practicable, of a fair and orderly market, and that a finding by the exchange of any substantial or continued failure by a specialist to engage in such a course of dealings will result in the suspension or cancellation of such specialist's registration in one or more of the securities in which such specialist is registered;

(iii) Provisions restricting his dealings so far as practicable to those reasonably necessary to permit him to maintain a fair and orderly market or necessary to permit him to act as an odd-lot dealer;

(iv) Provisions stating the responsibilities of a specialist acting as a broker in securities in which he is registered; and

(v) Procedures to provide for the effective and systematic surveillance of the activities of specialists.

(b) If after appropriate notice and opportunity for hearing the Commission finds that a member of a national securities exchange registered with such exchange as a specialist in specified securities has, for any account in which he, his member organization, or any participant therein has any beneficial interest, direct or indirect, effected transactions in such securities which were not part of a course of dealings reasonably necessary to permit such specialist to maintain a fair and orderly market, or to act as an odd-lot dealer, in the securities in which he is registered and were not effected in a manner consistent with the rules adopted by such exchange pursuant to paragraph (a)(2)(iii) of this section, the Commission may by order direct such exchange to cancel, or to suspend for such period as the Commission may determine, such specialist's registration in one or more of the securities in which such specialist is registered: *Provided, however*, If such exchange has itself suspended or cancelled such specialist's registration in one or more of the securities in which such specialist is registered, no further sanction shall be imposed pursuant to this paragraph (b) except in a case where the Commis-

sion finds substantial or continued misconduct by a specialist: *And provided, further*, That the provisions of this paragraph (b) shall not apply to a member of a national securities exchange exempted pursuant to the provisions of paragraph (d) of this section.

(c) For the purposes of this section, the term *rules* of an exchange shall mean its constitution, articles of incorporation, by-laws, or rules or instruments corresponding thereto, whatever the name, and its stated policies.

(d) Any national securities exchange may apply for an exemption from the provisions of this section in compliance with the provisions of section 11(c) of the Act.

(Sec. 11, 48 Stat. 891, 892; 15 U.S.C. 78k)

[29 FR 15863, Nov. 26, 1964, as amended at 46 FR 15135, Mar. 4, 1981]

**EXEMPTION OF CERTAIN SECURITIES
FROM SECTION 11(D)(1)**

§ 240.11d1-1 Exemption of certain securities from section 11(d)(1).

A security shall be exempt from the provisions of section 11(d)(1) with respect to any transaction by a broker and dealer who, directly or indirectly extends or maintains or arranges for the extension or maintenance of credit on the security to or for a customer if:

(a) The broker and dealer has not sold the security to the customer or bought the security for the customer's account; or

(b) The security is acquired by the customer in exchange with the issuer thereof for an outstanding security of the same issuer on which credit was lawfully maintained for the customer at the time of the exchange; or

(c) The customer is a broker or dealer or bank; or

(d) The security is acquired by the customer through the exercise of a right evidenced by a warrant or certificate expiring within 90 days after issuance, provided such right was originally issued to the customer as a stockholder of the corporation issuing the security upon which credit is to be extended, or as a stockholder of a company distributing such security in order to effectuate the provisions of section 11 of the Public Utility Holding Company Act of 1935. The right shall be

Securities and Exchange Commission

§ 240.11Aa3-1

deemed to be issued to the customer as a stockholder if he actually owned the stock giving rise to the right when such right accrued, even though such stock was not registered in his name; and in determining such fact the broker and dealer may rely upon a signed statement of the customer which the broker and dealer accepts in good faith; or

(e) Such broker and dealer would otherwise be subject to the prohibition of section 11(d)(1) with respect to 50 percent or less of all the securities of the same class which are outstanding or currently being distributed, and such broker and dealer sold the security to the customer or bought the security for the customer's account on a day when he was not participating in the distribution of any new issue of such security. A brokerdealer shall be deemed to be participating in a distribution of a new issue if (1) he owns, directly or indirectly, any undistributed security of such issue, or (2) he is engaged in any stabilizing activities to facilitate a distribution of such issue, or (3) he is a party to any syndicate agreement under which such stabilizing activities are being or may be undertaken, or (4) he is a party to an executory agreement to purchase or distribute such issue.

(Secs. 3, 11, 48 Stat. 882, 891; 15 U.S.C. 78c, 78k)

[13 FR 8184, Dec. 22, 1948]

§ 240.11d1-2 Exemption from section 11(d)(1) for certain investment company securities held by broker-dealers as collateral in margin accounts.

Any securities issued by a registered open-end investment company or unit investment trust as defined in the Investment Company Act of 1940 shall be exempted from the provisions of section 11(d)(1) with respect to any transaction by a person who is a broker and a dealer who, directly or indirectly, extends or maintains or arranges for the extension or maintenance of credit on such security, provided such security has been owned by the person to whom credit would be provided for more than 30 days, or purchased by such person pursuant to a plan for the automatic

reinvestment of the dividends of such company or trust.

(Secs. 2, 3, 11, and 23, Exchange Act, 15 U.S.C. 78b, 78c, 78k and 78w)

[49 FR 50174, Dec. 27, 1984]

REGISTRATION OF SECURITIES INFORMATION PROCESSORS

§ 240.11Aa2-1 Designation of national market system securities.

The term *national market system security* shall mean any reported security as defined in Rule 11Aa3-1.

[52 FR 24153, June 29, 1987]

§ 240.11Aa3-1 Dissemination of transaction reports and last sale data with respect to transactions in reported securities.

(a) *Definitions.* For purposes of this section:

(1) The term *transaction report* shall mean a report containing the price and volume associated with a transaction involving the purchase or sale of one or more round lots of a security ("transaction").

(2) The term *transaction reporting plan* shall mean any plan for collecting, processing, making available or disseminating transaction reports with respect to transactions in reported securities filed with the Commission pursuant to, and meeting the requirements of, this section.

(3) The term *effective transaction reporting plan* shall mean any transaction reporting plan approved by the Commission pursuant to this section.

(4) The term *reported security* shall mean any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan.

(5) The term *listed equity security* shall mean any equity security listed and registered, or admitted to unlisted trading privileges, on a national securities exchange ("exchange").

(6) The term *NASDAQ security* shall mean any registered equity security for which quotation information is disseminated in the National Association of Securities Dealers Automated Quotation system ("NASDAQ").